

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

ATHENEX, INC., et al.,

Debtors.¹

Chapter 11

Case No. 23-90295 (DRJ)

(Jointly Administered)

**SUPPLEMENTAL NOTICE OF EXECUTORY CONTRACTS AND UNEXPIRED
LEASES WHICH MAY BE ASSUMED AND ASSIGNED, PURSUANT TO SECTION
365 OF THE BANKRUPTCY CODE, IN CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS AND THE
PROPOSED CURE AMOUNTS WITH RESPECT THERETO**

PLEASE TAKE NOTICE THAT:

1. On May 14, 2023 (the "Petition Date"), Athenex, Inc. and its debtor-affiliates, (the "Debtors" or the "Company") each commenced a bankruptcy case in the United States Bankruptcy Court for the Southern District of Texas, Houston Division, by filing a voluntary petition under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

2. Additionally, on May 14, 2023, the Debtors filed their *Motion for Entry of an Order Approving (a) Bid Procedures; (b) the Form and Manner of Notice; (c) the Procedures for Determining Cure Amounts for Executory Contracts and Unexpired Leases; and Entry of an Order Approving (a) the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests; and (b) the Assumption and Assignment of Certain Contracts*

¹ A complete list of each of the Debtors in these Chapter 11 Cases may be obtained on the website of the Debtors' claims and noticing agent at <https://dm.epiq11.com/athenex>. The location of Athenex, Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 1001 Main Street, Suite 600, Buffalo, NY 14203.

and Unexpired Leases [Docket No. 17] (the “Bid Procedures and Sale Motion”)² with the United States Bankruptcy Court for the Southern District of Texas.

3. Pursuant to the Bid Procedures and Sale Motion, the Debtors sought (a) entry of an order (the “Bid Procedures Order”) (i) approving the bid procedures (the “Bid Procedures”); (ii) approving the form and manner of notice of transaction (the “Transaction Notice”) that sets forth the Bid Procedures and the date, time, and place for an auction, as required by the Bid Procedures; (iii) approving the form and notice of assumption (the “Assumption Notice”) and, if necessary, assignment, of executory contracts and expired leases (each an “Executory Contract”); (iv) establishing procedures for determining cure amounts in connection with the assumption (and, if necessary, assignment) of Executory Contracts; and (v) granting such other relief as is fair and equitable; and, if the Debtors pursue a sale of the Assets, (b) the entry of an order (the “Sale Order”): (i) approving the sale of the Debtors’ Assets free and clear; and (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases; and (iii) granting such other relief as is fair and equitable.

4. The Court entered the Bid Procedures Order on May 22, 2023 [Docket No. 113].

5. On May 26, 2023, the Debtors filed and served the *Notice of Executory Contracts and Unexpired Leases Which May Be Assumed and Assigned, Pursuant to Section 365 of the Bankruptcy Code, in Connection With the Sale of Substantially All of the Debtors Assets and the Proposed Cure Amounts With Respect Thereto* [Docket No. 141].

6. In accordance with the Objection and Cure Procedures set forth in the Bid Procedures Order, the Debtors are delivering this supplemental notice (the “Supplemental Assumption Notice”)

² All capitalized terms not expressly defined herein shall have the same meaning as ascribed in the Bid Procedures and Sale Motion. The Assets to be sold or otherwise transferred are any and all of the assets, rights, and properties pertaining to or used in connection with the operation of the Debtors’ business, but excluding any assets of Debtor Athenex Pharma Solutions, LLC.

identifying (a) those Executory Contracts, which may be assumed and assigned to the Prevailing Purchaser (the “Designated Contracts”) in connection with the Sale of the Assets, and in accordance with the procedures set forth in the Bid Procedures Order; and (b) the proposed Cure Amount for each Executory Contract identified on the Supplemental Assumption Notice.

7. An Executory Contract with respect to which you have been identified as a counterparty, if, any, and the corresponding proposed Cure Amount, if any, is set forth on the attached **Exhibit A**. An Executory Contract includes any and all supplemental agreements, amendments, letter agreements, and ancillary documents thereto. The Debtors’ records reflect that all post-petition amounts owing under your Executory Contract have been paid and will continue to be paid until the assumption and assignment or rejection of the Executory Contract, and that other than the Cure Amount, there are no other defaults under the Executory Contract.

Objections

8. Any objection must (a) be in writing; (b) state with specificity the nature of such objection; (c) if concerning a Cure Amount, set forth a specific default in the Designated Contract and claim a specific monetary amount that differs from the Cure Amount (if any) specified in this Supplemental Assumption Notice (with appropriate documentation in support thereof); and (d) comply with the Bankruptcy Rules. Unless otherwise provided herein, objections, if any, must be filed with the Bankruptcy Court and served so as to be received by the Objection Notice Parties listed below **June 12, 2023, at 4:00 p.m. (prevailing Central Time)** (the “Objection Deadline”).

9. Adequate assurance information for the Prevailing Purchaser, whether by virtue of making the Successful Bid at an Auction, or being selected as a Stalking Horse Bidder and making the Highest Initial Bid (the “Prevailing Purchaser Adequate Assurance Information”) will be available from the Prevailing Purchaser, subject to appropriate confidentiality protections.

10. UNLESS YOU FILE AN OBJECTION EITHER (A) TO THE DEBTORS' ASSUMPTION OR ASSIGNMENT OR TO THE PROPOSED CURE AMOUNT SET FORTH ON EXHIBIT A OR ON ANY FURTHER SUPPLEMENTAL ASSUMPTION NOTICE, OR (B) TO PREVAILING PURCHASER ADEQUATE ASSURANCE INFORMATION, AND SERVE SUCH OBJECTION IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE FOREVER BARRED FROM (A) OBJECTING TO THE DEBTORS' ASSUMPTION, ASSIGNMENT AND/OR THE CURE AMOUNT; (B) ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE PREVAILING PURCHASER OR ANY OTHER ASSIGNEE OF THE RELEVANT EXECUTORY CONTRACT, AND (C) ASSERTING THAT YOU ARE NOT BEING PROVIDED WITH ADEQUATE ASSURANCE OF FUTURE PERFORMANCE WITH RESPECT TO THE PREVAILING PURCHASER OR ANY OTHER ASSIGNEE WITHIN THE MEANING OF SECTION 365 OF THE BANKRUPTCY CODE.

Hearing Regarding Objections

11. If an objection is timely filed and served regarding any Executory Contracts listed on Exhibit A, and/or any further supplemental assumption notice, a hearing with respect to such objection will be held before the Honorable David R. Jones, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk St., Courtroom 400, Houston, Texas 77002 at **June 21, 2023, at 2:00 p.m.** (prevailing Central Time) (including the Sale Hearing); provided, however, that if an objection relates solely to the Cure Amount, the Designated Contract may be assumed by the Debtors and assigned to the Prevailing Purchaser provided that the cure amount the Counterparty asserts is required to be paid under Bankruptcy Code section 365(b)(1)(A) and (B) (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the

Debtors pending the Court's adjudication of the Cure Dispute or the parties' consensual resolution of the Cure Dispute.

Sale Hearing Notice

12. The Court has scheduled a hearing on **June 21, 2023, at 2:00 p.m. (prevailing Central Time)** (the "**Sale Hearing**") to potentially approve the Sale of the Assets. The Sale Hearing, if any, will be held before the Honorable David R. Jones, United States Bankruptcy Judge, at the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk St., Courtroom 400, Houston, Texas 77002.

13. Notice of the date and time of the Sale Hearing has been separately filed and served by the Debtors [*See* Docket No. 123]. The Sale Hearing may be continued at the sole discretion of the Debtors. The Transaction Notice and any information regarding continuances or adjournments will also be available on the case website maintained by EPIQ, the Debtors' claims and noticing agent, at <https://dm.epiq11.com/athenex>.

Objection Notice Parties

14. The Objection Notice Parties are as follows: (a) counsel to the Debtors, Pachulski Stang Ziehl & Jones LLP, at 440 Louisiana Ave., Suite 900, Houston, Texas, 77002, Attn: Michael D. Warner (mwarner@pszjlaw.com) and at 10100 Santa Monica Blvd., Suite 1300, Los Angeles, California 90067, Attn: Richard M. Pachulski (rpachulski@pszjlaw.com), Debra I. Grassgreen (dgrassgreen@pszjlaw.com), and Shirley S. Cho (scho@pszjlaw.com); (ii) counsel to the Agent, Sullivan & Cromwell LLP, Attn: Ari B. Blaut (blauta@sullcrom.com), Daniel R. Loeser (loeserd@sullcrom.com), Benjamin S. Beller (bellerb@sullcrom.com), Mark E. Dendinger (mark.dendinger@bracewell.com), Jonathan Lozano (jonathan.lozano@bracewell.com); (iii) counsel to the Prevailing Purchaser, if one has been determined; (iv) proposed counsel to the Committee, (a) McKool Smith PC, 600 Travis Street, Suite 7000, Houston, TX 77002, Attn: John J. Sparacino

(jsparacino@mckoolsmith.com) and S. Margie Venus (mvenus@mckoolsmith.com); and (b) Porzio, Bromberg & Newman, P.C., 100 Southgate Parkway, P.O. Box 1997, Morristown, NJ 07962-1997, Attn: Warren J. Martin, Jr. (WJMartin@pbnlaw.com), Robert M. Schechter (RMSchechter@pbnlaw.com) and Rachel A. Parisi (RAParisi@pbnlaw.com); (v) counsel to the Stalking Horse Bidder(s), if any; and (vi) the United States Trustee at the Office of the United States Trustee, 515 Rusk St, #3516, Houston, Texas, 77002, (Attn: Jana Smith Whitworth (Jana.Whitworth@usdoj.gov) and Ha Nguyen (Ha.Nguyen@usdoj.gov)).

Reservation of Rights

15. The presence of an Executory Contract on **Exhibit A**, and/or any Further Supplemental Assumption Notice does not constitute an admission that such any listed Executory Contract is an executory contract or unexpired lease within the meaning of section 365 of the Bankruptcy Code, or that such Executory Contract will be assumed by the Debtors and/or assigned to the Prevailing Purchaser. The Debtors reserve all of their rights to send out additional notices concerning additional or other Executory Contracts, subject to the provisions of any order by the Court.

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Dated: June 2, 2023

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Michael D. Warner

Michael D. Warner (SBT 00792304)
Maxim B. Litvak (SBT 24002482)
Benjamin L. Wallen (SBT 24102623)
440 Louisiana Street, Suite 900
Houston, TX 77002
Telephone: (713) 691-9385
Facsimile: (713) 691-9407
mwarner@pszjlaw.com
mlitvak@pszjlaw.com
bwallen@pszjlaw.com

-and-

Richard M. Pachulski (admitted *pro hac vice*)
Debra I. Grassgreen (admitted *pro hac vice*)
Shirley S. Cho (admitted *pro hac vice*)
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067
Telephone: (310) 277-6910
Facsimile: (310) 201-0760
rpachulski@pszjlaw.com
dgrassgreen@pszjlaw.com
scho@pszjlaw.com

Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on June 2, 2023, I caused a copy of the foregoing document to be served via the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Michael D. Warner

Michael D. Warner

EXHIBIT A-Cure List

Legal Name	Legal Address	Debtor Name	Contract Description	Cure Amount
AmerisourceBergen Drug Corporation, ASD Specialty Healthcare, LLC, operating through its ASD Healthcare, Oncology Supply and Besse Medical divisions	1300 Morris Drive Chesterbrook, PA 19087-5594	Athenex Pharmaceutical Division, LLC	Master Distribution Services Agreement dated January 1, 2021	\$0.00
AmerisourceBergen Global Manufacturer Services GmbH	Bogenschützenstrasse 9A 3008 Bern, Switzerland	Athenex Pharmaceutical Division, LLC	Master Services Agreement	\$0.00
Cardinal Health, Inc., Cardinal Health 3, LLC; Cardinal Health, 104 LP; Cardinal Health 107, Inc.; Cardinal Health 108, LLC; Cardinal Health 110, LLC; Cardinal Health 112, LLC; Cardinal Health 113, LLC; Cardinal Health P.R. 120, Inc.	7000 Cardinal Place Dublin OH 43017	Athenex	Generic Wholesale Service Agreement dated February 1, 2017 and the First Amendment to Wholesale Service Agreement	\$0.00
Cardinal Health, Inc., Cardinal Health 3, LLC; Cardinal Health, 104 LP; Cardinal Health 107, Inc.; Cardinal Health 108, LLC; Cardinal Health 110, LLC; Cardinal Health 112, LLC; Cardinal Health 411, Inc.; Cardinal Health P.R. 120, Inc.; Dik Drug, Inc.; Kinray, Inc.; Parmed Pharmaceuticals, Inc.	7000 Cardinal Place Dublin OH 43017	Athenex	National Logistics Center Agreement dated February 24, 2017	\$0.00

Legal Name	Legal Address	Debtor Name	Contract Description	Cure Amount
ClarusONE Sourcing Services LLP (aka McKesson)	ClarusONE Sourcing Services LLP 6 St. Andrew Street, Fifth Floor London, EC4A 3AE United Kingdom Attn: President Russell Square House 10-12 Russell Square London, WC1B 5EH United Kingdom Attn: Law Department	Athenex Pharmaceutical Division, LLC	Sourcing Framework Agreement dated September 17, 2018	\$0.00
Hanmi Pharmaceutical Ltd.	45 Hanmi Tower, Bang Yee-Dong SongPa-Gu Seoul 138-724 South Korea 14, Wiryeseong-daero, Songpa-gu, Seoul, 05545 South Korea	Athenex, Inc.	License Agreement dated December 16, 2011, as amended	\$0.00
McKesson Corporation	McKesson Corporation 6555 State Highway 161 Irving, TX 75037 Attn: SVP and CFO, US Pharmaceutical McKesson Corporation 6555 State Highway 161 Irving, TX 75037 Attn: Law Department, US Pharmaceutical, Manufacturer Relations	Athenex Pharmaceutical Division, LLC	Member Purchase and Services Agreement dated September 20, 2018, and First Amendment thereto dated October 28, 2019	\$0.00

Legal Name	Legal Address	Debtor Name	Contract Description	Cure Amount
McKesson Corporation	<p>McKesson Corporation 6555 State Highway 161 Irving, TX 75037 Attn: SVP and CFO, US Pharmaceutical</p> <p>McKesson Corporation 6555 State Highway 161 Irving, TX 75037 Attn: Chief Counsel Manufacturer Relationships</p>	Athenex Pharmaceutical Division, LLC	McKesson Supplier Standard Terms and Conditions dated August 1, 2017	\$0.00
McKesson Corporation	<p>McKesson Corporation 6555 State Highway 161 Irving, TX 75037 Attn: SVP and CFO, US Pharmaceutical</p>	Athenex Pharmaceutical Division, LLC	Agreement Regarding the Sale and Distribution of Restricted products dated June 15, 2018	\$0.00
McKesson Plasma and Biologics LLC & McKesson Specialty Care Distribution LLC	<p>McKesson Plasma and Biologics LLC & McKesson Specialty Care Distribution LLC 6555 N. State Highway 161 Irving, TX 75039 Attn: Ramesh Srinivasan, SVP Strategic Pricing & Manufacturer Relations</p> <p>McKesson Corporation Law Department 6555 N. State Highway 161 Irving TX 75039 Attn: Mary King, Senior Counsel, Manufacturer Relations</p>	Athenex Pharmaceutical Division, LLC	Pharmaceutical Purchase and Distribution Agreement dated October 7, 2020	\$0.00

Legal Name	Legal Address	Debtor Name	Contract Description	Cure Amount
Morris & Dickson Co., LLC	Morris & Dickson Co., LLC 410 Kay Lane Shreveport, LA 71115	Athenex Pharmaceutical Division, LLC	Distribution Agreement	\$0.00